COURT NO. 7

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 597 of 2001

(Old Case No. 642 of 1989)

Nityanand
son of Late Ghanshyam Nautiyal
Resident of Village Batkiyana
P.S. Srinagar
District Pauri Garhwal

.....Appellant

Versus

State of U.P.

.....Opposite Party

Sri Vipul Sharma, learned counsel for the appellant.
Sri Harish Pujari, learned Addl. G.A. for the State.

Dated: 27.09.2007

Hon'ble Dharam Veer, J.

This criminal appeal has been preferred under Section 374 (2) of The Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) against the judgment and order dated 28.02.1989 passed by Sessions Judge, Pauri Garhwal, camp at Lansdowne in Sessions Trial No. 19 of 1987, State v. Nitya Nand, whereby the learned Sessions Judge has convicted the appellant for the offence punishable under Section 324 of The Indian Penal Code, 1860 (hereinafter referred to as IPC) and awarded sentence only for payment of fine of Rs.3,000/- and further directed that in default of the fine the accused-appellant shall undergo rigorous imprisonment for six months.

2. In brief the prosecution case is that Avatar Singh was working in the SSB canteen and his nephew

(Bhanja) Uttam Singh was also living with him. On 09.05.1986 at 10.30 AM appellant Nityanand had caused injuries to Uttam Singh without any reason and injured Uttam Singh was admitted to the hospital. The complainant Avatar Singh went to the police station along with medical certificate to get the FIR lodged. Initially, on 09.05.1986 at 1.30 P.M. in Police Station Srinagar an NCR No.35 of 1986 was registered under Section 323 IPC against appellant Nityanand, that NCR is Ex.Ka-3. Injured Uttam Singh was medically examined by the Medical Officer, Government Combined Hospital, Srinagar, Garhwal on 09.05.1986 at 11.30 A.M., that medical report is Ex.Ka-1. From the hospital a memo was sent to the Police Station, Srinagar on 09.05.1986 at 13.10 PM, the entry was made in the G.D., the copy of the G.D. is Ex.Ka-2. Thereafter oral FIR, i.e. Ex.Ka-3 was lodged by Avatar Singh on 09.05.1986 at 1.30 PM. After receiving information, S.I. O.P. Singh went to the hospital to see injured Uttam Singh but his statement could not be recorded since the injured was unconscious and interrogation was also not possible due to the unconsciousness of the injured. Sub Inspector came back to the police station and looking to the injuries of the injured, the case was converted under Section 308 IPC on 09.05.1986 at 18.45 PM and the entry was made in the G.D., carbon copy of the G.D. is Ex.Ka-4. The investigation of the case was entrusted to S.I. O.P. Singh. During the course of the investigation, the Investigating Officer has recorded the statements of the witnesses and has prepared the site plan of the place of occurrence, the site plan is Ex.Ka-5. During the course of the treatment, injured Uttam Singh was referred to All India Institute of Medical Sciences, New Delhi where he was medically

examined and treated by the Medical Officers. After completing the investigation the Investigating Officer has submitted charge sheet, i.e. Ex.Ka-6, against the appellant under Section 308 IPC on 11.07.1986 in the Court of Chief Judicial Magistrate, Pauri Garhwal.

3. Learned Chief Judicial Magistrate committed the case to the Court of Session under Section 209 Cr.P.C. on 06.07.1987 after complying the provisions of Section 207 Cr.P.C.

4. Learned Sessions Judge framed charges against appellant under Section 307 IPC on 29.03.1988 and the charges were read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case the prosecution examined P.W.1 Uttam Singh (injured), P.W.2 Rafeeq (eye witness), P.W.3 Mustaq Ahmad (eye witness), P.W.4 Raj Kumar Chamoli (eye witness), P.W.5 Avatar Singh (complainant), P.W.6 Dr. N.K. Gupta and P.W.7 S.I. O.P. Singh (Investigating Officer). After that the statement of the accused-appellant was recorded under Section 313 Cr.P.C., who denied the allegations made against him.

6. After appreciating the evidence on record and hearing learned counsel for both the parties, learned Sessions Judge has convicted the appellant for the offence punishable under Section 324 IPC and awarded sentence only for payment of fine of Rs.3,000/- and further directed that in default of the fine the accused-

appellant shall undergo rigorous imprisonment for six months.

7. Against the said judgment and order, the appellant has preferred the present appeal before this Court.

8. I have heard Sri Vipul Sharma, learned counsel for the appellant and Sri Harish Pujari, learned Additional Government Advocate for the State and perused the entire record of the trail court as well as the instant appeal.

9. To prove its case the prosecution has examined P.W.1 injured Uttam Singh, who has stated in his statement that in the month of May 1986 he was living in Mohall Batkiyana, Srinagar. He has further stated that the said incident was taken place about two years and three months before, the time was about 10.30 AM. He had gone in front of the house of the accused-appellant to enquire about mason Rafeeq. In the meantime, appellant Nityanand reached there. He had asked appellant about the address of mason Rafeeq then appellant asked him why he wanted to meet the mason. He has refused to tell him (appellant) then the appellant told him how he had entered inside the boundary. When he replied then feeling annoyed the appellant caused injuries to him with *Danda* and on second blow he became unconscious. After that he came to sense after 8-9 days in the All India Institute of Medical Sciences, New Delhi. He received serious injuries on his head and temple (Kanpati) and he was remained under treatment in the Medical Institute for 2-3 months. He has further stated that his father has a tea-shop in Srinagar. This

witness was cross-examined by the accused himself at length but nothing has come out from his evidence, which may create any doubt. The evidence of this witness is reliable and believable.

10. P.W.2 Rafeeq is an eyewitness of the incident. He has stated that he is a mason and in the month of May 1986 he was working in the house of appellant Nityanand and Mustaq was working with him as a labourer. At about 10.00 to 10.30 AM, after hearing the noise, he had come out from the house and saw that the boy of the SSB canteen was lying there and the accused-appellant was standing nearby him holding *Danda* and before him the appellant gave one blow with *Danda.* After hearing noise the accused-appellant ran away with *Danda.* Some school boys took the injured from the place of occurrence and he did not know the name of that injured person. He identified Uttam Singh (injured) in the court. This witness was cross-examined by the accused at length but nothing has come out from his evidence, which may create any doubt. The evidence of this witness is reliable and believable.

11. P.W.3 Mustaq Ahmad is also an eyewitness. He has stated in his statement that in the month of May 1986 he was working in the house of the appellant Nityanand and the mason as well as to other labourers was also working along with him. About 10.30 AM in the day when they were working inside the house then talks were going on in between accused and the injured. After hearing the noise he had come out from the house and seen that Uttam Singh was lying on the land and the accused appellant had caused injury to him with wood

and thereafter he ran away. Uttam Singh was injured and unconscious and some people had taken away him from there. This witness was cross-examined by the accused at length but nothing has come out from his evidence, which may create any doubt. The evidence of this witness is reliable and believable.

12. P.W.4 is Raj Kumar Chamoli, who has stated in his statement that appellant Nityanand is known to him. The incident was taken place about two years three months before, time was about 10.30 AM. After hearing the noise he had come to his garden and saw that Nityanand was beating Uttam Singh. After that the accused-appellant went away from there and blood was oozing out from the head of Uttam Singh and Uttam Singh was unconscious. After that some boys took him from the place of occurrence. This witness was cross-examined by the accused at length but nothing has come out from his evidence, which may create any doubt.

13. P.W.5 Avatar Singh is the complainant of the case. He has stated in his statement that in the month of May 1986, he was living in the SSB canteen at Srinagar and Uttam Singh was also living there. About two years four months before one contractor had come to him and informed him that his nephew (Bhanja) was beaten. After this information, he went to the hospital where Uttam Singh was lying unconscious. He lodged the FIR on the basis of information given by the contractor and next day morning Uttam Singh was sent to the All India Institute of Medical Sciences, New Delhi. This witness was cross-examined by the accused at length but nothing has come out from his evidence,

which may create any doubt. The evidence of this witness is reliable and believable.

14. P.W.6 is Dr. N.K. Gupta, who has stated that in the month of May 1986 he was posted as Medical Officer in the Government Combined Hospital, Srinagar. Injured Uttam Singh was brought to him by Bhagwati Prasad Penuli. Injured Uttam Singh was examined by him at 11.30 AM on 09.05.1986. On medical examination he has found that the condition of the injured was very poor. The injured was unconscious and pulse rate was 72 P/M. Respiration rate was 20 P/M. The injured was moving his limbs and his eyes were updrawn. The blood was oozing from his right ear. The Doctor has found the following external injuries in the body of the injured:-

(i) One lacerated wound at right parietal eminence, red in colour, size 3 cm. x .5 cm. x .5 cm.
(ii) Right pinna is torned C tear of underling cartilage, lacerated wound size in 3 cm x .5 cm x .75 cm. Red in colour.
(iii) One contusion present on right side of parotid region. Just ant. to right ear. Colour is red. Size 10 cm x 8.5 cm.
(iv) One contusion present just below the Ist number injury. Size 4 cm x 5 cm. Colour is red.
(v) Blood coming from right ear.

15. As per opinion of the Doctor all the injuries were caused by the blunt object and *Lathy*. The injuries were fresh. X-ray was advised. Medical report was prepared by him at the same time, i.e. Ex.Ka-1.

16. P.W.7 S.I. O.P. Singh was the Investigating Officer of the case. He has stated in his statement that on 09.05.1986 he was posted as Sub Inspector in

Srinagar Police Station. On that day, from the hospital he received a memo through a ward boy. The entry was made in report no.21 at 13.10 hours by Virendra Singh, Munsi. For the investigation of that memo, he went to the Government Hospital. The copy of the memo is Ex.Ka-2. Injured Uttam Singh was unconscious in the hospital that is why he could not record the statement then he came back to the police station. In the meantime, NCR was registered against Nityanand under Section 323 IPC by Avatar Singh (maternal uncle of the injured), entry of which was made in report no.22 at 13.30 hours. The copy of the NCR is Ex.Ka-3. After returning from the hospital the case was converted under Section 308 IPC. The entry was made in the report no.35 at 18.45 hours on 09.05.1986. Copy of the G.D. is Ex.Ka-4. During the course of the investigation he prepared site plan of the place of occurrence, i.e.Ex.Ka-5 and also recorded the statement of the witnesses. After completing the investigation he has filed the charge sheet against the accused-appellant on 11.07.1986, i.e. Ex.Ka-6.

17. After that the statement of accused-appellant was recorded under Section 313 Cr.P.C. who denied the allegations made against him and in reply to the question no.7, he stated that Raj Kumar Chamoli, who is living in the back of his house has enmity with him and for proving the enmity with Raj Kumar Chamoli he has filed certain papers. He has further submitted that some cases are pending between him and Raj Kumar Chamoli and has further submitted that on the persuasion of Raj Kumar Chamoli, S.I. O.P. has falsely implicated him.

18. Sri Vipul Sharma, learned counsel for the appellant has submitted that on the basis of the above discussions, no case under Section 324 IPC is made out against the appellant.

19. The accused-appellant has filed certain papers regarding the enmity with Raj Kumar Chamoli but those papers have not been proved as per the law. There are two independent eyewitnesses viz. P.W.2 Rafeeq and P.W.3 Mustaq Ahmed and the evidence of P.W.1 Uttam Singh is supported by these two eyewitnesses and corroborated by the injury report submitted to this effect. The FIR is also prompt which was lodged by Avatar Singh (maternal uncle of the injured) on 09.05.1986 at 1.30 P.M. after receiving information by one contractor that his nephew (Bhanja) Uttam Singh was beaten by appellant Nityanand, consequently he became unconscious.

20. From the evidence discussed above, it is proved that on 09.05.1986 at 10.30 AM at Batkiyana, Srinagar, District Pauri Garhwal appellant Nityanand caused injury to injured Uttam Singh with *Danda* and he had given *Danda* blow twice due to this injury Uttam Singh had become unconscious and after that he was taken to the Government Hospital by some students. The injured was medically examined by the Medical Officer, N.K. Gupta, Government Combined Hospital, Srinagar, Garhwal on 09.05.1986 at 11.30 AM and from there a memo was sent to the Police Station Srinagar on 09.05.1986 at 13.10 PM and the oral FIR was also lodged by Avatar Singh (maternal uncle of the injured) on 09.05.1986 at 13.30 hours under Section 323 IPC. On

that information S.I. O.P. Singh had gone to the hospital where he saw that injured Uttam Singh was unconscious that is why he could not record the statement of the injured. After returning to the police station, he converted the case under Section 308 IPC and entry was made in the G.D. on 09.05.1986 at 18.45 hours. Thereafter the injured was referred to All India Institute of Medical Sciences, New Delhi for further treatment. There, he was treated by the Doctors for about 2-3 months. This fact is supported by the evidence of P.W.2 Rafeeq and P.W.3 Mustaq Ahmed, who are the independent eyewitnesses and also supported by the injury report, i.e. Ex.Ka-1 and statement of Medical Officer, N.K. Gupta (P.W.6). Accordingly, the above said incident is well proved by the prosecution beyond reasonable doubt against the accused appellant that the appellant has caused the injury to injured Uttam Singh on 09.05.1986 at 10.30 AM at Batkiyana, Srinagar, District Pauri Garhwal.

21. The learned Sessions Judge has rightly convicted the accused-appellant under Section 324 IPC on the basis of the evidence available on record and the judgment and order of the learned Sessions Judge is justified and correct as per the law and evidence. I am also in full agreement with the judgment and order passed by the learned Sessions Judge convicting and sentencing the appellant for the offence punishable under Section 324 IPC.

22. In view of the discussions made above, the appeal is devoid of merits and is hereby dismissed. The judgment and order dated 28.02.1989 passed by learned

Sessions Judge, Pauri Garhwal, camp at Lansdowne in Sessions Trial No. 19 of 1987 convicting and sentencing the appellant for the offence punishable under Section 324 IPC is hereby confirmed.

23. Let the record be sent to the lower court for compliance of the order.

(Dharam Veer, J.)

27.09.2007
RBS